

Corrected

# In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 19-1220V

UNPUBLISHED

JOSHUA MONNENS

and

ELISABETH MONNENS

on behalf of R.M., a minor child,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: July 15, 2020

Special Processing Unit (SPU);  
Damages Decision Based on Proffer;  
Rotavirus Vaccine; Intussusception

*Glynn Weldon Gilcrease, Jr., Law Office of Glynn W. Gilcrease, Jr., PC, Tempe, AZ, for petitioner.*

*Voris Edward Johnson, U.S. Department of Justice, Washington, DC, for respondent.*

## **DECISION AWARDING DAMAGES<sup>1</sup>**

A Decision Awarding Damages was previously issued in this case on February 7, 2020. ECF 22. On June 4, 2020, the parties filed a Joint Motion for Relief from Judgment. ECF 25. In the motion, the parties “jointly petition the Court for an order altering the Judgment . . . to modify the form of the award.” *Id.* I granted this motion and vacated the prior decision awarding damages in an order dated July 15, 2020. ECF 26.

In the Joint Motion, Petitioners reported that they had encountered difficulties establishing a guardianship for R.M., and “have determined, that they prefer, as an alternative, for respondent to purchase an annuity for the benefit of R.M., payable to R.M. at the time R.M. reaches the age of majority, which would not require establishment of a guardianship.” *Id.* Therefore, as noted above and as requested by

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

the parties, the prior decision issued on February 7, 2020 is vacated and withdrawn. This new decision reflects the updated terms agreed upon by the parties in ECF 25.

On August 16, 2019, Joshua and Elisabeth Monnens filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,<sup>2</sup> (the “Vaccine Act”), on behalf of their minor child, R.M. ECF 1. Petitioners allege that R.M. suffered from an intussusception as a result of receiving a rotavirus vaccination on June 11, 2018. *Id.* at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On November 21, 2019, a ruling on entitlement was issued, finding Petitioners entitled to compensation for R.M.’s intussusception. ECF14. On February 6, 2020, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioners should be awarded \$50,000.00 as guardians/conservators of R.M.’s estate and \$1,029.27, representing compensation for their past unreimbursable expenses. ECF 21. In the Proffer, Respondent represented that Petitioners agree with the proffered award. *Id.*

However, as noted above, Petitioners have encountered difficulties establishing a guardianship for R.M. ECF 25. Therefore, as requested in the Joint Motion, **I award Petitioners the total amount of \$51,029.27 as follows:**

- A. An annuity contract purchased in the amount of \$50,000.00 paid to the Life Insurance Company as described in the attached Motion,<sup>3</sup> with the payment payable to R.M. when he reaches the age of majority on February 9, 2036. This amount represents compensation for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which R.M. is entitled; and
- B. A lump sum payment of \$1,029.27, in the form of a check made payable directly to petitioners, representing compensation for petitioners’ unreimbursed past expenses pursuant to 42 U.S.C. § 300aa-15(a)(1)(B).

These amounts represent compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.<sup>4</sup>

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<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

<sup>3</sup> See ECF 25 at 2-4 (attached) for a detailed description of the requirements for the annuity contract.

<sup>4</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties’ joint filing of notice renouncing the right to seek review.

**IT IS SO ORDERED.**

**s/Brian H. Corcoran**

Brian H. Corcoran  
Chief Special Master